

2014 (1) ECS (206) (Tri - Del.)

Customs, Excise & Service Tax Appellate Tribunal
West Block No. II, R.K. Puram, New Delhi - 110066
Principal Bench

Date of Decision: 30.01.2014

CCE, RAIPUR

Vs.

MANJIT SINGH

Customs Stay Application No.61216/2013

Appeal No. C/60274/2013-CU(DB)

(Arising out of Order No. II(08)01/1nq/ICD-Dhannad/13-14 dated 5.11.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Raipur.)

Appearance:

Shri S.K. Dubey, DR

Shri C. Harishankar, Advocate

For the appellant.

For the respondent

CORAM:

Hon'ble Shri Justice G. Raghuram, President

Hon'ble Shri Rakesh Kumar, Member (Technical)

(Final order No. 50586/2014 Dated: 30.01.2014)

“That merely on the basis of an affidavit filed by the respondent, Shri Manjit Singh, he could not be treated bona fide owner of the goods, that since the value of the goods is grossly under-declared and the importers are fictitious and non-existent, provisional release of the goods on payment of duty on the declared value and furnishing of bank guarantee for 25% of the value of the goods to the respondent would cause a irreparable damage to the Revenue” (Para 3)

“Conditions as prescribed in Section 110A are meant for safeguarding the interests of the Revenue. Thus, while the law provides for provisional release of the goods to the owner pending adjudication, while ordering provisional release, the interests of the revenue have to be kept in mind and adequately safeguarded and when the provisional release would jeopardize the interests of the Revenue, it cannot be ordered.” (Para 9)

Per Rakesh Kumar:

The facts leading to filing of this appeal and stay application by the Revenue are, in brief, as under:-

1.1 M/s. Aashavi Enterprises, M/s. Dhruv Enterprises, M/s.KAMEnterprises, M/s. Khyati Traders, M/s. KM International, M/s. Satyam Enterprises and M/s. Vaishali Enterprises imported a number of consignments consisting of various consumer goods in twelve containers out of which four reached at ICD, Dhannad and the remaining eight are at gateway port of Nava Shava. All these imports had been made from Hong Kong. The Directorate General of Revenue Intelligence, on receipt of information that various items of consumer goods which are restricted items for import and can be imported only against specific licence issued by DGFT are being imported by grossly under-declaring their assessable value by some unscrupulous importers in fictitious name, started inquiries in respect of the above mentioned imports. On the basis of the IEC code nos. the addresses and other details of the importers were ascertained but on inquiries, the same were found to be fictitious and non-existent. The imported goods lying at ICD, Dhannad and Nava Shava were therefore placed under seizure under Section 110 of the Customs Act, 1962. While the investigation into these imports were going on, one Shri Manjit Singh, the respondent in this case, made an application to the Commissioner of Customs and Central Excise, Raipur under whose jurisdiction the ICD, Dhannad falls, for provisional release of the goods lying at ICD, Dhannad as well as at Nava Shava in terms of the provisions of Section 111 A of the Customs Act, 1962. The Jurisdictional Commissioner in response to the request of the respondent under a letter dated 7.10.2013 replied vide his letter dated 23.10.2013 to his Advocate, Shri Yogesh M. Rohina, Santacruz (W), Mumbai-400 054, as under:-

"The DRI, Mumbai being the investigating agency in the above case have enquired into the case and found that Manjit Singh is not bonafide owner of the imported goods. Moreover, it is also found that M/s. KAM Enterprises, M/s. Khyati Traders and M/s. K.M. Traders are non-existent. (They are the importer and import documents are in their name). Under the circumstances it is not possible to release goods seized by DRI, Mumbai to your client.

Deputy Commissioner, ICD-Dhannad has accordingly informed you rejecting the application. If you desire to be heard personally in this matter you are requested to appear before undersigned on any working day."

Thus in terms of the above letter the Commissioner refused the provisional release of the goods seized by DRI to Shri Manjit Singh on the ground that M/s. KAM, M/s. Khayati and M/s. KM International are non-existent and the respondent, Shri Manjit Singh is not a bonafide owner of the goods.

1.2 Subsequently, after about 2 weeks, the same Commissioner vide his order dated 5.11.2013 ordered –

- (a) provisional release of the goods except those which are prohibited or restricted goods and which are otherwise freely importable as per ITC on payment of applicable duties on the value assessed and 25% of the duty as bank guarantee or Revenue deposit for securing redemption fine or personal penalty and on furnishing bond for full value of restricted goods so released and
- (b) provisional release of restricted goods as per the Exim Policy on payment of applicable duties and 20% of value as assessed as bank guarantee or revenue deposit towards redemption fine/ personal penalty and furnishing bond for full value of restricted goods so released. In respect of the goods imported by M/s. Aashavi Importers and Dhruv Enterprises, the provisional release was to be given on production of the necessary affidavit/ authorization and in respect of other five importers, M/s. KAM Enterprises, M/s. Khyati Enterprises, M/s. KM International, M/s. Satyam Enterprises and M/s. Vaishali Enterprises, provisional release to Shri Manjit Singh on the above terms was to be given on the basis of the affidavits already submitted by the respondent. The order also directed that before effecting release, of the originals of affidavits/ authorization are to be verified. The order, however, mentioned that release of the goods whose import as per Exim Policy is prohibited is denied. The Commissioner also directed the shifting of the containers lying at Nava Sheva, custom house to ICD Dhannad under Customs supervision.

1.3 The above order of the Commissioner passed under Section 110 A of the Customs Act, 1962 was reviewed by the Committee of Chief Commissioners in terms of the provisions of Section 129 D of the Customs Act, 1962 and since the Committee was of the view that the Commissioner's order regarding provisional release of the goods to the respondent is contrary to the provisions of law and absolutely incorrect, the Committee directed him to file an appeal to the Tribunal in terms of the provisions of Section 129D (4). In terms of the Committee's order dated 14.11.2013, this appeal has been filed along with the stay application.

2. Heard both the sides. Though this matter is listed today for hearing of only the stay application, after hearing the stay application, the Bench was of the view that since only a short issue regarding legality of the order of the provisional release of the goods to the respondent passed by the

Commissioner is involved, the matter can be taken up for final disposal. Accordingly, with the consent of both the sides, the matter was heard for final disposal.

3. Shri S.K. Dubey, Id. Standing Counsel for the appellant, pleaded that all the importers in this case on inquiry by the investigating officers of DGRI, have been found to be fictitious and non-existent, that investigation revealed that not only the goods imported are the goods which are restricted for import in terms of the Exim Policy and could be imported only against specific import licences issued by DGFT, the same have been heavily underinvoiced, that in terms of the provisions of Section 110 A of the Customs Act, 1962, document or goods seized under Section 110 of the Customs Act, 1962, may pending the order of the adjudicating authority, be released to the owner on taking a bond from him in proper form with such security and conditions as the adjudicating authority may require, that from the provisions of Section 110 A of the Customs Act, 1962, it is clear that the provisional release of the goods seized can be made only to the owner with such security and with such specific conditions as the adjudicating authority may prescribe, that the respondent is not a bonafide owner of the goods, that this is clear from the Commissioner's order dated 23.10.2013, wherein taking cognizance of the fact that the importers have been found to be non-existent and therefore Shri Manjit Singh could not be treated as bonafide owner of the imported goods, the Commissioner informed the respondent that the seized goods could not be released to him, that in view of this, his subsequent order dated 5.11.2013, ordering provisional release of the imported goods except those in prohibited category to the respondent, subject to payment of duty and furnishing of bank guarantee and bond as prescribed in the order, is contrary to the provisions of the law, that merely on the basis of an affidavit filed by the respondent, Shri Manjit Singh, he could not be treated bona fide owner of the goods, that since the value of the goods is grossly under-declared and the importers are fictitious and non-existent, provisional release of the goods on payment of duty on the declared value and furnishing of bank guarantee for 25% of the value of the goods to the respondent would cause a irreparable damage to the Revenue, that out of 12 containers, 8 containers lying at Nava Shava port, have been imported at that port, and therefore, the Commissioner, Central Excise, Raipur had neither jurisdiction nor the powers to order the transfer of those goods to the ICD, Dhannad, and provisional release from these to the Respondent and that in view of this, the Commissioner's order is not only contrary to the provisions of the law but also highly improper.

6. Shri Hari Shankar, Advocate, the Id. Counsel for the respondent, pleaded that all the imports have been made at ICD, Dhannad, that out of 12 containers, 4 containers have already arrived and the remaining containers lying at Nava Shava have to be transshipped to ICD, Dhannad, that since in respect of these consignments, the destination is ICD, Dhannad, it is the Commissioner, Central Excise, Raipur, who has the jurisdiction to order the provisional release, that Shri Manjit Singh, the respondent is the actual and bonafide owner of the goods imported, that the conditions to safeguard the interests of the Revenue have been imposed by the Commissioner and that the Commissioner in terms of the provisions of Section 110 A, the Commissioner is within his powers to order provisional release subject to the condition as prescribed by him, that the conditions prescribed by the Commissioner are sufficient to safeguard the interests of the Revenue and that in view of this, there is no illegality or impropriety in the impugned order.
7. We have considered the submissions from both the sides and perused the records.
8. The provisional release of the goods has been ordered by the Commissioner under Section 110A of the Act, which is reproduced below:-

“release of goods, documents and things seized pending adjudication. - Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.”
9. From perusal of section 110 A, it is clear that -
 - (a) provisional release of the goods can be made only to the owner of the goods; and
 - (b) provisional release has to be made on taking a bond in proper form from the owner with such security and such conditions as the adjudicating authority may prescribe. There is no dispute that that the importers have been found to be fictitious persons. Though the respondent seeks provisional release of the seized goods claiming to be the owner of the goods imported, we do not find any evidence on record in support of the claim of the respondent, that he is the bonafide owner. Just by furnishing affidavits claiming to be the owner, the respondent does not become bonafide owner of the seized goods. We also take note of the fact that the Commissioner in his earlier order dated 29.10.2013 addressed to the Advocate, Shri Yogesh M. Rohira

of the respondent had mentioned that the goods cannot be provisionally released to Shri Manjit Singh, as he is not the bonafide owner of the imported goods. Though in subsequent order dated 5.11.2017 the Commissioner reversing his earlier stand, has ordered provisional release to the respondent, he has not stated as to how he is satisfied that the respondent is the bonafide owner of the goods. Provisional release of the goods imported in the name of M/s.KAM Enterprises, M/s.Khyati Enterprises, M/s. K.M. International, M/s. Satyam Enterprises and M/s.Vaishali Enterprises has been ordered to the respondent, Shri Manjit Singh on the basis of the affidavits regarding ownership already submitted by him and the provisional release of the goods imported in the name of M/s. Aashavi Enterprises and M/s.Dhruv Enterprises has been ordered to the respondent, Shri Manjit Singh in the event of production of the necessary affidavits/ authorization. In our view, this order of the Commissioner is perverse, as is mentioned above, just on the basis of the affidavits filed by a person in respect of whom the Commissioner had earlier held that he is not a bonafide owner, he does not become the bonafide owner. Moreover the Commissioner's order regarding provisional release of the goods imported by M/s. Aashavi Enterprises and M/s.Dhruv Enterprises to Shri Manjit Singh in the event of production of the necessary affidavits/ authorization is a strange order as when the importers are found to be fictitious and non-existent, it is not understood as to who will give the authorization.

10. Moreover, there is allegation that the value of the goods has been grossly undeclared and the adjudication of the matter may result in huge demands of duty against the importers. In view of this, releasing goods to the respondent who is not even a bonafide owner of the goods would seriously jeopardize the interests of the Revenue. The conditions of taking a bond from the owner with security and other conditions as prescribed in Section 110A are meant for safeguarding the interests of the Revenue. Thus, while the law provides for provisional release of the goods to the owner pending adjudication, while ordering provisional release, the interests of the revenue have to be kept in mind and adequately safeguarded and when the provisional release would jeopardize the interests of the Revenue, it cannot be ordered. In this case when the importers are fictitious persons and the value of the goods has been grossly undeclared and the adjudication of the matter may result in huge duty demands against the importers releasing the goods on provisional basis to a person, who is not the owner of

the goods would certainly jeopardize the interests of the revenue as, if provisional release is made and the respondent, Shri Manjit Singh vanishes with the goods and subsequently duty demands are confirmed, the department will neither have the goods nor the persons from whom the duty can be recovered.

10. We are, therefore, satisfied that the impugned order is contrary to the provisions of the law and in fact is a perverse order. Such an order is not sustainable at all. The impugned order is, therefore, set aside. Revenue's appeal as well as stay application are allowed.